1951

File No. O. L. F Audit-51

K

Legal Department.
A **BRANCH**

Subject:— Opinions under the Bombay Local Fund Audit Act, 1930.

D-3
(2)

File No. O. L. F. Audit/51

Gen. 194 c.

552-A

CONTENTS

Legal Department File No. O. L.F. Audit /51.

Sr.No.	R. I. / O. No.	Subject	Pages
		Opinions under the Bombay Local Fund Audit Act, 1930	
	431-Confl. 8-5-1951.	Sections 9(b) and 11 Whether the Councillers responsible for the delay in carrying out the revision of the house tax can be legally charged against under Sec. 11 for the amount of deficency that may not have resulted had the tax been levied earlier.	

1-2-

V.v.k. 28/6/56/

5C.

R.I.No. 343 confl.dt. 5-5-51.

Submitted with ref. to to L.S.G. &.P.H.D. office note on p- 3-4- ante.

2. It appears that the quadrinnial revision of the house. tax of the Faizpur Municipality which was due in 1944-45 was not carried out till 1947-48. The Director of Local Authorities C.D. considers that the delay in carrying out the revision has, resulted in a loss of revenue to the Muny. to the extent of Rs. 17640/- and has issued notices, to the Councillors responsible for the delay, under sect. 11 of the Bom. Local Fund Audit Act, 1930 to show cause as to why the loss caused by their negligence should not be recovered from them. The question for consideration is whether the councillors responsible for the delay in carrying out the revision of the house tax can be legally charged against under section 11 for the amount of any difficency that may not have resulted had the tax been levied earlier.

3. Sect. 11 of the Bom. L.F.Audit Act 1930, empowers the Commr. inter alia to charge against any perosn responsible there, the amount of any deficiency or loss caused by the gross negligence or misconduct of that person. This power is apparently relatable to the provisions of sect-9(b) which requires the Auditor to include in his report in his report a statement of the amount of any deficiency or loss which appears to have been caused by the gross negligence or misconduct, Prima ficie

these provisions are very wide, but the Act as its preamble lays down purports to provide for and regulate the audit of the local funds under the management and control of certain local authorities in the state of Bombay. "Local Fund" means any fund to the control and magagement of which a local authority is legally entitled and includes the proceeds of any cess, rate, duty, tax which such authority is legally entitled to impose and any property vested in such authority (see sect. 3(d)). Under sect. 5 what the local authority is required to present for audit is the accounts of the local fund. Consequently the scope of sect. 9 would have to be restricted to the local fund of the local xx authority concerned . As has been held by the P.L.A. in his opinion dated 18.1-51 in the Nander Municipal case, failure or default in imposing a tax cannot be said to have caused a deficienty of the kind contemplated by sect. 9(b) .That deficiency must must be within the frame work of the financia l xxxx scheme as already existing. Deficiency in the proceeds of the house tax which could have been recovered by the Faizpur Muny, had the Councillors been more deligent could not therefore be the subject matter of action under sect.11.

The view taken by the L.S.G. &P.H.D. in para 3 of its office note dated 3.5.1951, is correct.

The case referred to in para 4 of that Deptt's note is being dealt with by Colr. (M.L.) as it linked with the litigation papers of the Vengula Muny, case.

Id/- dt/- 8/5/

D. .(Civil) A may be the reply

Id/- R.T.K. dt/- 7/5/

I Secy Id/- 7/5/
L.S.G. & P.H.D. No.